

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Services, Inc. For)	
Forbearance Under 47 U.S.C. § 160(c) From)	WC Docket No. 16-363
Enforcement Of Certain Rules For Switched)	
Access Services And Toll Free Database Dip)	
Charges)	
)	

**REPLY COMMENTS OF
CONSOLIDATED COMMUNICATIONS COMPANIES AND
WEST TELECOM SERVICES, LLC**

Philip J. Macres
KLEIN LAW GROUP ^{PLLC}
1250 Connecticut Avenue N.W.
Suite 200
Washington, DC 20036
Tel: 202-289-6956
Email: pmacres@kleinlawpllc.com

Allen C. Zoracki
KLEIN LAW GROUP ^{PLLC}
90 State Street
Suite 700
Albany, NY 12207
Tel: 518-336-4300
Email: azoracki@kleinlawpllc.com

*Counsel for Consolidated
Communications Companies and
West Telecom Services, LLC*

Date: December 19, 2016

TABLE OF CONTENTS

I.	The Commenters Overwhelmingly Agree that Forbearance Is the Wrong Vehicle for Addressing the Reforms Sought under the Petition	2
A.	Intercarrier Compensation Reforms Should Be Addressed through the Holistic Approach of the Commission’s Ongoing Rulemaking Proceeding	3
B.	AT&T Lacks Standing to Request the Relief Sought	5
C.	The Commission Should Reject All Requests that Seek Adoption of New or Amended Rules, Because Such Relief Cannot Be Granted in a Forbearance Proceeding	6
II.	The Record Also Fully Supports Denial of the Petition on Substantive Grounds	8
III.	Conclusion	10

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Services, Inc. For)	
Forbearance Under 47 U.S.C. § 160(c) From)	WC Docket No. 16-363
Enforcement Of Certain Rules For Switched)	
Access Services And Toll Free Database Dip)	
Charges)	
)	

**REPLY COMMENTS OF
CONSOLIDATED COMMUNICATIONS COMPANIES AND
WEST TELECOM SERVICES, LLC**

In accordance with the Commission’s Public Notice concerning the above-captioned matter,¹ Consolidated Communications Companies (“Consolidated”) and West Telecom Services, LLC (“West Telecom”) submit these Reply Comments in opposition to the Petition of AT&T Services, Inc. (“AT&T”) for Forbearance Under 47 U.S.C. § 160(c) (the “Petition”).

A wide-range of different carriers and associations responded to AT&T’s Petition, with the vast majority of commenters² requesting that the Commission deny the Petition in full. Many of these commenters echo the analysis presented in Consolidated and West Telecom’s comprehensive response to the Petition provided in their Motion for Summary Denial and Opposition.³ In particular, the record overwhelmingly demonstrates that (1) forbearance is the

¹ *Pleading Cycle Established for Comments on AT&T’s Petition for Forbearance from Certain Tariffing Rules*, WC Docket No. 16-363, Public Notice, DA 16-1239 (rel. Nov. 2, 2016).

² All parties that filed on December 2, 2016 in this proceeding, whether they filed motions, oppositions, and/or comments, are generally referred to herein as “commenters.”

³ Consolidated Communications Companies and West Telecom Services, LLC’s Motion for Summary Denial of and Opposition to AT&T’s Petition, WC Docket No. 16-363 (filed Dec. 2, 2016) (“Motion for Summary Denial and Opposition”)

wrong vehicle for addressing the reforms sought by AT&T and (2) even when considered on the substance, the Petition must be denied for failure to satisfy the three-part statutory test that applies to forbearance requests.

I. The Commenters Overwhelmingly Agree that Forbearance Is the Wrong Vehicle for Addressing the Reforms Sought under the Petition

The vast majority of the commenters support denial of the Petition—either via summary denial or on substantive grounds—because a Section 10(c) forbearance petition should not be used to implement intercarrier compensation reforms. Two independent reasons support denial. First, there is near universal agreement that granting the Petition would be inconsistent with the Commission’s objective to ensure all intercarrier compensation reforms are considered through the holistic rulemaking being conducted in the Commission’s Connect America Fund (“CAF”) proceeding.⁴ Second, several commenters also correctly point out that AT&T—which filed its Petition as an IXC “customer” of the services at issue, rather than as the entity seeking forbearance from a rule imposed on it—lacks standing to seek forbearance under 47 U.S.C. § 160(c). As to the limited suggestions that the Commission adopt new or amended rules in this forbearance proceeding, the Commission should reject them because a forbearance proceeding is not the appropriate vehicle for doing so.

⁴ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208 (collectively “CAF proceeding”), Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 13 (2011) (“*USF/ICC Transformation Order*”), *aff’d sub. nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2072 (2015).

A. Intercarrier Compensation Reforms Should Be Addressed through the Holistic Approach of the Commission’s Ongoing Rulemaking Proceeding

As Consolidated and West Telecom demonstrated in their Motion for Summary Denial and Opposition, a grant of piecemeal reforms through forbearance would contravene the Commission’s existing policies and the stated objective for its overall reform of intercarrier compensation.⁵ As the Commission recognized in the *USF/ICC Transformation Order*, all reforms affecting intercarrier compensation are being addressed in the CAF proceeding, in view of its vast, comprehensive record, to ensure that all inter-related issues are addressed through a “holistic” approach.⁶ AT&T’s proposal of sudden mandatory detariffing for certain rate elements is contrary to this Commission objective.

Nearly all commenters acknowledge this same fundamental problem with the Petition, with most commenters calling for the Petition’s outright denial on this basis.⁷ For example, NTCA-The Rural Broadband Association explains that “the Commission should reject the Petition because it seeks relief that is already the subject of a pending rulemaking proceeding,” noting that any grant of forbearance would upset the comprehensive rulemaking reforms being

⁵ Motion for Summary Denial and Opposition, at 6-11.

⁶ *USF/ICC Transformation Order*, ¶ 13.

⁷ Comments of NTCA-The Rural Broadband Association, WC Docket No. 16-363, at 4-9 (filed Dec. 2, 2016) (“NTCA Comments”); Motion for Summary Denial and Opposition to AT&T’s Petition of Birch Communications, Inc. *et al.*, WC Docket No. 16-363, at 8-14 (filed Dec. 2, 2016) (“Birch *et al.* Motion and Opposition”); Opposition of HD Tandem, WC Docket No. 16-363, at 1-2 (filed Dec. 2, 2016) (“HD Tandem Opposition”); Comments of NCTA – The Internet & Television Association, WC Docket No. 16-363, at 1 & 4 (filed Dec. 2, 2016) (“NCTA Comments”); Comments of the Nebraska Rural Independent Companies, WC Docket No. 16-363, at 2-3 (filed Dec. 2, 2016) (“NRIC Comments”); O1 Communications, Inc.’s Opposition to Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. §160(c), WC Docket No. 16-363, at 4-6 (filed Dec. 2, 2016) (“O1 Opposition”); Opposition of Omnitel Communications, Inc., WC Docket No. 16-363, at 2 (filed Dec. 2, 2016) (“Omnitel Opposition”); Comments of Windstream Services, LLC on AT&T Petition for Forbearance, WC Docket No. 16-363, at 1-2 (filed Dec. 2, 2016) (“Windstream Comments”).

considered in the Commission’s CAF proceeding.⁸ O1 Communications, Inc. (“O1”) likewise explains that the issues raised in the Petition are “only a small subset of the numerous intercarrier compensation issues” under consideration in the CAF proceeding,⁹ such that “the Commission should address these issues in the far reaching rulemaking aimed to consider [them] in the context of overall intercarrier compensation reform.”¹⁰

Even parties supportive of reforms addressing the Petition’s underlying concerns reach the same conclusion.¹¹ For instance, CenturyLink explains that implementing reforms through forbearance, rather than through rulemaking, “would prohibit LECs from recovering the costs of...services from IXC’s without creating an alternative cost-recovery mechanism.”¹² Similarly, NCTA – The Internet & Television Association explains that “the preferred method for [implementing certain reforms] would be through a comprehensive rulemaking proceeding rather than the piecemeal forbearance AT&T seeks here.”¹³ Likewise, Inteliquent acknowledges that “a rulemaking would be a better forum to address the issues.”¹⁴

In short, parties overwhelmingly agree that the reforms proposed in the Petition be considered within the context of the CAF proceeding and upon review of its comprehensive record, not in a forbearance proceeding. Denial on this basis is especially appropriate since the Petition is based on unsubstantiated allegations concerning “the behavior of a limited number of

⁸ NTCA Comments at 4.

⁹ O1 Opposition at 1; *see also id.* at 4-6.

¹⁰ *Id.* at 5.

¹¹ CenturyLink Opposition/Comments to AT&T Forbearance Petition, WC Docket No. 16-363, at 2-3 (filed Dec. 2, 2016) (“CenturyLink Opposition/Comments”).

¹² *Id.* at 3.

¹³ NCTA Comments at 1.

¹⁴ Comments of Inteliquent *et al.*, WC Docket No. 16-363, at 7 (filed Dec. 2, 2016) (“Inteliquent *et al.* Comments”).

carriers” in only two states “not behavior of LECS industry wide.”¹⁵ Indeed, the tariffed rates or behaviors of individual carriers in two states (or issues with fraudulent schemes that are “sometimes” experienced)¹⁶ are better considered on a case-by-case basis through the Section 208 dispute process,¹⁷ which AT&T is very familiar with. The Petition should therefore be denied so that all inter-related, industry-wide reforms are appropriately considered through the comprehensive, holistic approach of the Commission’s CAF proceeding.

B. AT&T Lacks Standing to Request the Relief Sought

Consolidated and West Telecom also support the position of multiple commenters that demonstrate another significant and fundamental defect of the Petition: AT&T lacks standing to seek the forbearance sought.¹⁸ As those commenters explain, Section 10(c) of the Communications Act allows a carrier to seek the Commission’s forbearance from rules “with

¹⁵ O1 Opposition at 6; *see also* Verizon Comments, WC Docket No. 16-363, at 2-3 & 6-7 (filed Dec. 2, 2016) (noting problems in two states with certain carriers and sham 8YY calls handled by certain carriers); *see also* NCTA Comments at 1 (stating that a rulemaking proceeding “also would be the best way to consider AT&T’s unsubstantiated assertions regarding the level of charges for database queries”).

¹⁶ *See* Petition at n.19; *see also* Verizon Comments at 5-6.

¹⁷ NTCA Comments at 8; *see also* Birch *et al.* Motion and Opposition at 5; NRIC Comments at 5; O1 Opposition at 22; Omnitel Opposition at 10; Peerless Network, Inc.’s Opposition to AT&T Services, Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363, at 16 (filed Dec. 2, 2016) (“Peerless Opposition”); Windstream Comments at 3-4; Iowa Network Services, Inc.’s Motion for Partial Summary Denial of AT&T Services, Inc.’s Forbearance Petition WC Docket No. 16-363, at 14 (filed Dec. 2, 2016).

¹⁸ *See* James Valley Cooperative Telephone Company *et al.*’s Joint Motion for Summary Denial of and Opposition to Petition of AT&T Services, Inc. for Forbearance Pursuant to 47 U.S.C. § 160(c), WC Docket No. 16-363, at 2-4 (filed Dec. 2, 2016) (“James Valley *et al.* Motion and Opposition”); Opposition of the 8YY Origination Competitive Service Providers to the Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c), WC Docket No. 16-363, at 4 (filed Dec. 2, 2016); Opposition of WTA – Advocates for Rural Broadband and Eastern Rural Telecom Association, WC Docket No. 16-363, at 3 (filed Dec. 2, 2016) (“WTA *et al.* Opposition”).

respect to *that carrier*...or any service offered by *that carrier*[.]”¹⁹ AT&T’s Petition, however, does not seek to free itself from regulation; instead, the Petition is attempting to change the regulatory treatment of switched access services that AT&T purchases as an IXC *customer*.²⁰ Indeed, nothing in the Petition suggests that AT&T’s ILEC affiliates are expressly seeking forbearance from the Commission’s tariffing rules that apply to them. Nor do AT&T’s ILEC affiliates provide any evidentiary support for the relief that AT&T the IXC requests.²¹ The Commission should therefore deny the Petition for this independent reason.

C. The Commission Should Reject All Requests that Seek Adoption of New or Amended Rules, Because Such Relief Cannot Be Granted in a Forbearance Proceeding

Section 10 allows the Commission to forbear from applying an existing regulation or provision of the Communications Act.²² As the Commission has explained, “the essential nature of a petition for forbearance is that it is a petition for relief from regulation,” under which “[t]he petitioner asks the Commission to forbear from enforcing against it one or more rules or statutory provisions.”²³ While the Commission may grant a Section 10(c) “in whole or in part,”²⁴ this option does not permit the Commission to use a forbearance proceeding to establish new or

¹⁹ 47 U.S.C. § 160(c) (emphasis added).

²⁰ See James Valley Cooperative Telephone Company *et al.* Comments at 2-3 (noting that the Petition, at n.1, describes AT&T Corp. as “the entity that is billed and that [sometimes] pays the charges for the access services discussed in the Petition”).

²¹ *Id.* at 3-4.

²² See generally 47 U.S.C. § 160.

²³ *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, WC Docket No. 07-267, 24 FCC Rcd 9543, ¶ 30 (2009) (“*Forbearance Procedure Order*”).

²⁴ 47 U.S.C. § 160(c).

amend its existing rules,²⁵ as such relief can only be granted through the notice and comment process of a rulemaking proceeding.²⁶

Despite this constraint, some commenters request that the Commission adopt modified relief in the form of new or amended rules. For example, one group of commenters suggests that, rather than forbearing from rules that permit tariffed charges for 8YY database dips (as sought in the Petition), the Commission modify its CLEC benchmark rule to cap such charges at the current corresponding ILEC rate.²⁷ These commenters also suggest that, instead of forbearing from rules permitting tariffed charges for tandem switched transport on all calls to and from an access stimulating LEC (as sought in the Petition), the Commission should limit the tariffed charges for transport mileage to one mile for such LECs.²⁸ Such requests do not seek partial forbearance, but instead seek to establish new or modified rules that cannot be granted in a forbearance proceeding.²⁹

Other commenters that propose variations on the reforms sought by AT&T appear to recognize that such proposals must be considered through the rulemaking process. Indeed, while

²⁵ *New England Telephone and Telegraph Company and New York Telephone Company Petition for Forbearance from Jurisdictional Separations Rules*, AAD 96-66, 12 FCC Rcd 2308, ¶¶ 12-13 (1997) (denying the forbearance petition because it, in part, “goes beyond mere forbearance from regulation and instead requires that [the Commission] ...amend [its] rules” and stating that “revisions to [its] rules are appropriately addressed in a rulemaking proceeding through which interested parties have the opportunity to offer constructive comment on how the Commission...can best address the needs of all affected parties”).

²⁶ *See id.* ¶ 13; 5 U.S.C. § 553(b) & (c).

²⁷ Inteliquent *et al.* Comments at 2-5.

²⁸ *Id.* at 5-8.

²⁹ In fact, these commenters later note that “[a] rulemaking would be a better forum to allow all interested parties to comment on, and the Commission to evaluate, [further reforms].” *Id.* at 8. Similarly, while NCTA suggests that the Commission consider the reforms proposed by AT&T under certain clarifications, NCTA ultimately acknowledges that the Commission should deny the Petition in its existing form and “focus instead on completing its comprehensive reform” of the intercarrier compensation regime. NCTA Comments at 4.

CenturyLink proposes that the Commission make certain rule clarifications, which effectively seek to impose new or amended rules, to address the concerns raised in the Petition, it concurrently requests that the forbearance relief sought by AT&T be denied.³⁰ Similarly, Peerless Network, Inc. proposes creation of a benchmark rule for 8YY database dip charges (conceivably through the rulemaking process), but requests that AT&T's proposed forbearance from rules permitting such charges be denied.³¹

As such commenters apparently recognize, such rule revision proposals are not appropriate for consideration and cannot be granted in a forbearance proceeding. They must instead be considered through the rulemaking process. Moreover, the need to allow for consideration of the varying proposals further reinforces the importance of addressing such issues within the context of the comprehensive CAF proceeding, as discussed in Section I.A. above. The Commission should therefore reject all requests by commenters that seek new or amended rules through this forbearance proceeding.

II. The Record Also Fully Supports Denial of the Petition on Substantive Grounds

Even if the Petition were not wrought with procedural flaws, denial of the Petition would still be fully warranted on substantive grounds. As an initial matter, many of the commenters echo Consolidated and West Telecom's demonstration that the Petition lacks the requisite evidentiary support to obtain forbearance.³² As a representative example, Peerless Network, Inc. explains that the Petition contains no evidentiary facts to support its assertions, and thus fails to

³⁰ See generally CenturyLink Opposition/Comments at 1-3.

³¹ Peerless Opposition at 3-4.

³² NTCA Comments at 11-14; Birch *et al.* Motion and Opposition at 14-18; HD Tandem Opposition at 3-4 and n.5; James Valley *et al.* Comments at 14; NCTA Comments at 4-5; OI Opposition at 6; Omnitel Opposition at 7-10; Peerless Opposition at 10-13; WTA *et al.* Opposition at 4-5.

meet the Commission's requirements to state a *prima facie* case for forbearance.³³ As such, neither the Petition, nor any general support of it offered by others,³⁴ are sufficient to meet the evidentiary and analytical burden of proof placed on the party seeking forbearance.³⁵

The record educed under the comments also overwhelmingly demonstrates that Section 10's three-part test is not and cannot be met here. As Consolidated and West Telecom showed in detail, the permissive tariffing rules are necessary to ensure that providers of tandem switching and tandem-switched transport are paid a just and reasonable rate for services provide, as in the absence of a tariff IXCs will have no incentive to negotiate a reasonable rate.³⁶ Several parties echo that the Petition should be denied on this basis to avoid the uncertain and disruption that would result.³⁷

The limited commenters that offer modified or conditioned proposals under which the Petition might be supported (which as noted above could not be granted through forbearance in any event) likewise do not overcome this problem. Indeed, under the proposal offered by Inteliquent *et al.*—*i.e.*, to reduce the amount of transport to one mile for which a tariffed charge may be assessed on traffic sent to or from an access stimulator—IXCs would be equally, if not more, emboldened to aggressively dispute and withhold charges in attempt to avoid payment.

This proposal likewise raises the same logistical problems that the requested forbearance presents. As several commenters explain, the Petition requests that the Commission forbear from

³³ Peerless Opposition at 10-11.

³⁴ Verizon, the only commenter to support all of the relief sought by AT&T, likewise provides no evidence to support its factual assertions. *See* Verizon Comments at 3-4 (providing no evidentiary support for its factual assertions concerning alleged traffic pumping).

³⁵ *See* Consolidated and West Telecom's Motion for Summary Denial and Opposition at 15-19.

³⁶ *Id.* at 22-23.

³⁷ WTA *et al.* Comments at 5-8; Peerless Opposition at 3-4; O1 Opposition at 11-12.

permissive tariffing rules for tandem switching and transport providers that exchange traffic with a third-party access stimulator, even where the tandem switching and transport provider is *not itself* engaged in access stimulation.³⁸ Since a tandem switching and transport provider would have no reasonable way of knowing whether any of their subtending end office LECs are engaged in access stimulation, it would be unable to determine when mandatory detariffing may occur.³⁹ As such, IXCs would be emboldened to aggressively dispute and withhold charges under allegations of third-party conduct, leading to increased transaction costs and legal fees for tandem and transport providers and—as a consequence—higher prices and reduced competition in the market for these services.

III. Conclusion

For the foregoing reasons, and those presented in Consolidated and West Telecom’s Motion for Summary Denial and Opposition, the Commission should deny the Petition in full.

Respectfully submitted,

/s/ Philip J. Macres
Philip J. Macres
KLEIN LAW GROUP ^{PLLC}
1250 Connecticut Avenue N.W.
Suite 200
Washington, DC 20036
Tel: 202-289-6956
Email: pmacres@kleinlawpllc.com

Allen C. Zoracki
KLEIN LAW GROUP ^{PLLC}
90 State Street

³⁸ See, e.g., Peerless Opposition at 6; Birch *et al.* Motion and Opposition at 18.

³⁹ See Peerless Opposition at 6 (explaining that “[t]he tandem provider could never determine whether a LEC satisfied the traffic triggers in § 61.3(bbb)(ii) under AT&T’s proposal”); Birch *et al.* Motion and Opposition at 30.

Suite 700
Albany, NY 12207
Tel: 518-336-4300
Email: azoracki@kleinlawpllc.com

*Counsel for Consolidated
Communications Companies and
West Telecom Services, LLC*

Date: December 19, 2016